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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC ELLINGTON,

Defendant and Appellant.

B214025

(Los Angeles County Super. Ct.
No. BA338139)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Judith L. Champagne, Judge. Affirmed.

Christopher Love, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

A jury found appellant guilty of possession of a controlled substance (cocaine base) and possession of marijuana for sale. The trial court sentenced appellant to a total prison term of six years under the Three Strikes law. He appeals from the judgment. Because he raises no arguable issues, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Prosecution Evidence

At 8:00 p.m. on March 23, 2008, police officers Steussie and Smith were patrolling a neighborhood in Los Angeles when they pulled their patrol car into an alley known to be a high crime area. Steussie is an expert in narcotics. The officers saw two Black men sitting and facing each other in the alley. Appellant was one of the men, while Mr. South was the other. As Steussie approached, he saw Mr. South throw a crack cocaine pipe on the ground.

Steussie found the pipe on the ground and detained both men. Steussie found a second crack pipe and a rock of crack cocaine within inches of where appellant had been sitting. Steussie also saw a gym bag directly to the left of where appellant had been sitting and a cardboard box directly to his right. Both were about an arm's reach from where appellant had been sitting. Inside the box was a plastic bag containing 67 grams of marijuana, within which were 31 new, small zip lock plastic bags (baggies) with "little blue devil faces" printed on them. Steussie believed the baggies were used to package the marijuana for sale.

The zipper on the duffle bag was open. Steussie could smell the odor of marijuana coming from inside the bag. Inside, Steussie found a baggie with blue faces containing 12 grams of marijuana. The duffle bag also held court papers with appellant's name on them, clothing, and a second baggie with marijuana.

Despite it being a cool night, appellant was not wearing a shirt and was sweating profusely. He was very "animated," waving his hands, shifting his weight from side to

side, and grinding his jaws as he spoke. Appellant's pupils were dilated and his heart was beating at 104 beats per minute. Steussie believed these symptoms were consistent with the use of crack cocaine. Also, based on the amount of marijuana found in the duffle bag, combined with the 31 small baggies, Steussie believed the marijuana was intended for sale. Appellant and Mr. South were arrested.

Defense Evidence

Clarence Key testified that appellant had lived at Key's house from March 17, 2008, through March 23, 2008. On March 23, Key packed a gym bag with clothes and toiletries and gave it to appellant at about 7:00 p.m. Key also put some papers belonging to appellant in the bag and gave him \$50. Key did not put any marijuana in the bag and did not see appellant put any into the bag.

At about 7:10 p.m., Key drove appellant to a mission or shelter. On the way, they saw a prostitute and picked her up at appellant's request. Key drove to a nearby alley and stopped at about 7:45 p.m. This was the same alley where appellant was later arrested. A Black man in his mid-forty's approached Key on the driver's side of the car and offered to sell him a bag of marijuana.

Appellant gave the prostitute some money and then they got out of the car. Appellant took the duffle bag with him. They went into a vacant a building and Key saw them undressing to have sex. Five minutes later, Key drove out of the alley and was ready to leave when he saw appellant and the prostitute running after him. Appellant asked Key to wait for him so Key could drive him to the shelter. While appellant went back to the building to get the bag, Key drove away to meet his mother for Easter dinner.

This appeal followed.

DISCUSSION

We appointed appellate counsel, who filed a brief stating he could not find any arguable issues for appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) We sent a letter to appellant inviting him to submit a letter or brief raising any issues he wished for us to

consider. He filed a supplemental brief, which mostly discussed preliminary hearing testimony and his perceived inconsistencies in the amount of marijuana seized by police.

We have reviewed the record and appellant's claims. We find no arguable issues for appeal.

DISPOSITION

The judgment is affirmed.¹

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RUBIN, Acting P. J.

WE CONCUR:

BIGELOW, J.

MOHR, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6, of the California Constitution.

¹ Petitioner filed a petition for writ of habeas corpus after briefing in this appeal was complete. (*In re Eric Ellington*, Case No. B220342.) Briefing in the habeas proceeding is ongoing. We will rule on the writ petition in due course, separately from this appeal.